IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3533 OF 2004
IN
FIRST APPEAL NO.1142 OF 2002
IN
SPECIAL CIVIL SUIT NO.859 OF 1998

M/s.Virendra Engineering Company ..Applicant

Versus

State of Maharashtra & Anr. ..Respondents

Mr.Y.C.Dhebar i/by Dhebar & Shah for applicant.

Mr.K.K.Tated AGP for Respondents.

Coram : S.B.Mhase &
R.S.Mohite,JJ

Date : 12.10.2004.

PC

. Heard both sides.

1. This is an application moved by the original plaintiffs for release of an amount of Rs.40,59,780/- deposited in the trial court by the appellant-State of Maharashtra. While granting a stay to the execution of a decree passed in Special Civil Suit No.859/98 decided by the Civil Judge, Senior Division, Pune, this court has granted ad-interim relief in terms of prayer clause-(b) subject to the deposit of the entire decreetal amount with interest and cost within 12 weeks from 22.8.2002. The said order was passed in Civil

Application No.3326 of 2002 in First Appeal No.1142 of 2002. In view of this order the above referred amount has been deposited by the appellant/State of Maharashtra.

2. The main suit is filed by the original plaintiff/present applicant for recovery of an amount of Rs.21,87,200.60/-. This amount is being claimed for supply of science kits to be used by the students in the secondary school. So far as the science kits are concerned, the Judgment shows and both counsel admit that the kits have been supplied and received by the State of Maharashtra. However, the payment has not been made by the appellant on the ground that the kits supplied were not as per the schedule and supply was at a delayed stage and therefore, ultimately the kits cannot be used by the students to whom they were to be supplied and therefore, payment was withheld. On merits, the trial court has considered this aspect and has granted the decree. From the Judgment, we have found that except the delayed supply, there is no defence made out by the present appellant. However, what we have noticed is that the trial court has granted interest on the principal amount at the rate of 18.5%. Mr.Tated learned AGP states that the said rate of interest is exhorbitant and is not palatable to consider in the light of present bank rates of the Reserve Bank of India. Therefore, he submitted

that the decree is bad to the extent of grant of exhorbitant rate of interest.

3. Mr.Tated learned AGP further submitted that as the delivery of the science kits were made at a delayed stage, they were not useful to the state authorities so as to supply to the students and therefore, there is a challenge to the principal amount also. This submission will be considered at the final hearing stage. At this stage, we are only considering as to whether the decreetal amount deposited by the appellant shall be released in favour of the present applicant-respondent or not. What we prima facie find is that if the State was of the view that because of the delayed supply the science kits could not be used by the students and as the delivery is not before the schedule, it was open for the State not to accept the supply of those goods. However, that option was not exercised by the State Government and the delivery was accepted. What happened to the accepted goods is not known. Therefore, prima facie what we find is that belated delivery was accepted and if the delivery was accepted, there is a prima facie obligation to make the payment for the goods which were accepted. Therefore, what we find is that there is no hitch in releasing the principal amount of Rs.21,87,200.60/-. However, so far as the interest part is concerned, we find, it requires consideration at the final

hearing stage and it will be inappropriate to release the said amount without having any appropriate security for the realisation of the said amount in case the order under challenge is reversed by this court at a final hearing. Therefore, what we find it appropriate is that the rest of the amount i.e. excluding the amount of Rs.21,87,200.60/- shall be released in favour of the respondent only on furnishing bank guarantee of a nationalised bank creating an obligation on the bank till the disposal of this appeal to the effect that in case order under challenge is reversed, the bank will deposit the said amount in the court within a period of 4 weeks from the date of the final Judgment of this court. Therefore, we pass the following order :-

O R D E R

(a) The trial court is hereby directed that out of the deposited amount of Rs.40,59,780/- the amount of Rs.21,87,200.60/- be released in favour of the applicant-plaintiff-decree holder without security. However, rest of the amount also can be released in favour of the applicant/plaintiff in case the applicant-plaintiff furnishes bank guarantee of the said amount creating continuous obligation on the bank to redeposit the said amount in case the decree is reversed by this court at the final hearing stage

within a period of 4 weeks in this court.

(b) The observations made by this court are only for the purpose of releasing the amount and they shall not be considered at the stage of final hearing.

(c) Civil application is disposed of accordingly.

. Certified copy expedited.

. Parties to act on an ordinary copy of this order duly authenticated by the P.S./Sheristedar of this court as a true copy.

(R.S.Mohite,J) **(S.B.Mhase,J)**

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IN
S.C.SUIT NO.859 OF 1998

The State of Maharashtra & Anr. ..Applicants

Versus

M/s.Virendra Engineering Company ..Respondents

Mr.K.K.Tated AGP for the State.

Mr.Y.C.Dhebar i/by Dhebar & Shah for Respondents.

Coram : S.B.Mhase &
R.S.Mohite,JJ

Date : 12.10.2004.

PC

. In view of disposal of Civil Application No.3533 of 2004 and disbursement of the amount, this Civil application is hereby disposed of.

(R.S.Mohite,J) **(S.B.Mhase,J)**